

# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548

FILE: B-222035

DATE: July 2, 1986

MATTER OF: City of Ansonia, Connecticut - Sewer Services  
Claim

- DIGEST: 1. City of Ansonia may recover \$33,187.50 for sewer services provided to the Army's housing facilities at Fort Devens, Massachusetts. The City may be paid on a quantum meruit basis, pursuant to the Comptroller General's claims settlement authority, 31 U.S.C. § 3702 (1982), because the services constituted a permissible procurement, the Government received and accepted the services after it was notified of the connection, the City acted in good faith and the amount claimed represents no more than the reasonable value of the benefit received.
2. City of Ansonia's quantum meruit claim is not barred by the 6-year time limitation in 31 U.S.C. § 3702(b)(1) (1982). All monetary claims against the United States cognizable by this Office must be received within 6 years of the date that claim first accrues or be forever barred. The City's claim first accrued no earlier than March 4, 1981, when the Army accepted sewer services by failing to disconnect its facilities and continuing its use of the City's sewer system with the knowledge that the connection existed and that the city expected payment. Since the City's claim reached this Office on August 26, 1985, the 6-year time limitation in 31 U.S.C. § 3702 (1982) was met.

By letter dated August 23, 1985, the U.S. Army Finance and Accounting Center forwarded to our Office for settlement the claim of the City of Ansonia, Connecticut (Ansonia) in the amount of \$33,187.50. The claim represents sanitary sewer services provided to family housing facilities at Fort Devens, Massachusetts. Based on our review of the facts in this situation, we conclude that this Office may authorize payment of \$33,187.50 to Ansonia on a quantum meruit basis for the services provided between March 4, 1981 and June 5, 1984.

035893

### BACKGROUND

The record indicates that during 1975 there were discussions between the Army's Director of Facilities Engineering at Fort Devens and Ansonia's contractor in charge of a sewer construction project along the boundaries of Fort Devens. The discussions concerned whether Ansonia would be permitted to enter Fort Devens, as part of the construction project, to connect the Army's housing facilities to the city's new sewer line. The Army agreed to the entry but stated, in a letter dated May 20, 1975, that, in exchange, the connection (including the plugging and abandonment of the Army's existing sewer line at Fort Devens) was to be made at no expense to the Government.

Ansonia subsequently revised its sewer construction plans so that no entry into Fort Devens was required and no connection was to be made by Ansonia between the city's new sewer line and the Army's housing facilities. Ansonia, through its contractor, notified the Army of these revised plans, by letter dated May 30, 1975, stating that the Army would be notified when construction was completed so that it could make its own arrangements for connecting the Fort Devens housing facilities to the city's new sewer line. By letter dated January 28, 1977, Ansonia notified the Army that construction of the sewer line was complete and that connection could now commence. The January 1977 letter also stated that the necessary permits had to be secured from the city prior to making the connection.

No requests for permits were ever made by the Army to connect its housing facilities to the city's sewer system. Nevertheless, at some point in time, the Army's housing facilities at Fort Devens were connected to Ansonia's sewer system. The record does not indicate who made the connection or exactly when it was accomplished. Subsequent dye testing by Ansonia, in 1982, confirmed that the connection had, in fact, been made. Ansonia, apparently, was not aware that this connection had been made until some time in early 1981. On March 4, 1981, Ansonia sent the Army, as a user of the sewer system, a sewer assessment bill for \$33,187.50, based on a flat rate per linear frontage foot representing the Army's share of the cost of constructing the city's new sewer line. The letter also stated that a separate user charge, representing operation and maintenance costs, would be established later and billed to the Army. Subsequent to this notification, the Army continued using Ansonia's sewer system and made no attempt to have its facilities disconnected from the Ansonia system.

On August 10, 1982, the Army refused to pay the sewer assessment on the grounds that it was a tax levied against Federal property from which the Government is constitutionally immune. The Army cited our decisions in 49 Comp. Gen. 72 (1969), B-168287, Feb. 12, 1970 and B-168287, Nov. 9, 1970, as support for its conclusion. The Army indicated, however, that these decisions do permit reimbursement on a quantum meruit basis for the reasonable value of services accepted and received by the Government.

As a result of the Army's refusal to pay the sewer assessment, Ansonia requested payment of \$44,797.48 on a quantum meruit basis, representing its determination of the reasonable value of the services rendered. Ansonia arrived at this figure by preparing and comparing cost estimates for two alternative ways the Army could provide sewer services to the Fort Devens housing facilities. The Army agreed that the \$44,797.48, as calculated, represented the reasonable value of the services rendered.

Due to the uncertainty surrounding Ansonia's claim, however, further discussions were held between the Army and Ansonia concerning the amount of the claim. On June 5, 1984, a Memorandum of Understanding was signed by the Fort Devens contracting officer and representatives of Ansonia, in which the Army agreed to pay and Ansonia agreed to accept \$33,187.50 as final payment for sewer services provided to Fort Devens through June 5, 1984. The Memorandum also stated that the sewer connection between the Fort Devens housing facilities and Ansonia's sewer system was made without the knowledge or consent of either Fort Devens or Ansonia. Accompanying the Memorandum was an invoice from Ansonia requesting payment of the \$33,187.50 on a quantum meruit basis. No other documentation was included with the invoice.

On August 23, 1985, the Army forwarded Ansonia's claim for \$33,187.50 to this Office as a doubtful claim, under section 5.1, title 4 of the GAO Policy and Procedures Manual for Guidance of Federal Agencies. The Army recommended that the claim be paid but noted two areas of doubt: 1) Whether Ansonia's claim is time barred under 31 U.S.C. § 3702 (1982), which requires that all claims be received in the General Accounting Office within 6 years after the claim first accrues or be forever barred, and 2) Whether there was any commitment, unauthorized or otherwise, by Government representatives to obtain the sewer services from Ansonia which can now be ratified by authorized contracting officials, thereby providing a basis for payment.

### ANALYSIS

Although the record establishes that the Fort Devens housing facilities were connected to Ansonia's sewer system, no evidence is available to establish when this connection was made and who made it. In their Memorandum of Understanding, the Army and Ansonia agreed that the sewer connection was made without the knowledge or consent of either the Army or Ansonia. Thus, no initial commitment, unauthorized or otherwise, was made by Government representatives to obtain the sewer services from Ansonia.

Where a valid written contract for a procurement was never executed and the claimant is unable to establish even an unauthorized commitment by a Government representative to pay for the services provided, the agency may not ratify the procurement retroactively. 64 Comp. Gen. 727 (1985). However, under this Office's claims settlement authority (31 U.S.C. § 3702 (1982)), the Comptroller General may authorize reimbursement to the claimant on a quantum meruit basis when certain conditions are met. Id.

We must first make a threshold determination that the services would have been a permissible procurement had the formal procedures been followed. 64 Comp. Gen. at 728. We have held that service charges, representing operation, maintenance, and construction costs, made to the Government for the right to use a city's sewage disposal system may properly be paid by the Government. See B-158832, May 2, 1966; 42 Comp. Gen. 246 (1962). In addition, we have stated that formalized utility-type service agreements may properly be entered into by the Government to cover such sewer services. See 49 Comp. Gen. 72, 77 (1969). Thus, the sewer services at issue here could have been procured by formal agreement between Ansonia and the Army.

Next we must find that the Government received and accepted the benefit, the persons seeking payment acted in good faith, and the amount claimed represents the reasonable value of the benefit received. 64 Comp. Gen. at 728.

Since, according to the Memorandum of Understanding, the connection to Ansonia's sewer system was made without the knowledge or consent of the Army, there is no basis, prior to March 4, 1981, to establish that the Army accepted the benefit of the sewer connection. However, since the Army chose to continue using Ansonia's sewer system after March 4, 1981, when it was notified of the connection, we conclude that it accepted the benefit of the sewer connection, as well as

the sewer services it received after that date. Without the connection, the Army would be unable to use the sewer system. Thus, the value of the connection must be included in the quantum meruit payment for services provided since March 4, 1981.

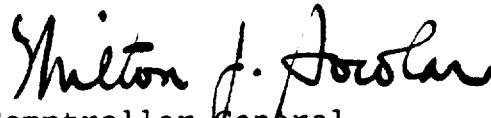
Since Ansonia was similarly unaware of the connection until early 1981, it acted in good faith in attempting to bill the Army in March 1981 and in continuing to press its claim since then. Therefore, this Office may authorize payment of Ansonia's claim for the reasonable value of the sewer connection, and the services provided to the Army since March 4, 1981.

It is difficult to make a precise determination of the benefit the Government receives from a public improvement such as the one involved here. However, in order to prevail on a quantum meruit basis, a claimant must show exactly how it arrived at any amounts claimed. An unsupported, blanket statement that a particular sum is the fair and reasonable value of the services rendered will not suffice. No payment may be made until it is clearly shown that the specified and outlined method of computation is based purely upon the value of the particular services rendered to the Government. See generally B-168287, Nov. 29, 1970.

Ansonia's claim does appear to set forth, with sufficient clarity, the services actually rendered to the Government. In addition, Ansonia did set forth in detail its method of computing the reasonable value of the services rendered. Ansonia found, and the Army agreed, that this figure was actually \$44,797.48. However, due to the uncertainties surrounding the connection, Ansonia reduced its claim to \$33,187.50, as payment for the reasonable value of both the sewer connection and use services provided from March 4, 1981 through June 5, 1984. Considering the difficulty of precisely determining the fair and reasonable value of a service such as is involved here, we cannot say that payment of \$33,187.50 is unreasonable.

Under 31 U.S.C. § 3702(b)(1), a monetary claim against the United States cognizable by this Office must be received within 6 years of the date that the claim first accrued or be

forever barred.<sup>1/</sup> Our Office has ruled that a claim first accrues, for the purposes of this Act, when all events have occurred which fix the liability, if any, of the United States and entitles the claimant to sue or file a claim. See 42 Comp. Gen. 337, 340 (1963); 29 Comp. Gen. 517, 519 (1950). Ansonia's quantum meruit claim first accrued no earlier than March 4, 1981, when the Army accepted the sewer services by failing to disconnect its facilities and continuing its use of the City's system with the knowledge that the connection existed and that the City expected payment. Since Ansonia's claim reached this Office on August 26, 1985, it satisfied the 6-year time limitation in 31 U.S.C. § 3702 (1982). Accordingly, Ansonia's claim is allowed.

*for*   
Comptroller General  
of the United States

---

<sup>1/</sup> Ansonia's claim is subject to the 6-year time limitation imposed by this statute since claims by political subdivisions of states, such as the City of Ansonia, are not included in the law's exception for claims by states. See B-199838, Oct. 20, 1981.